IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 31473 of 2007(V)

PETITIONERS:

1. MATHEW GEORGE, AGED 67 YEARS
   S/O. LATE VARKEY, PENGATTU HOUSE
   PULICUNNU P.O., ALAPPUZHA

2. ZACHARIA GEORGE,AGED 62 YEARS
   S/O. LATE VARKEY, PENGATTU HOUSE
   PULICUNNU P.O., ALAPPUZHA

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.B.PRAMOD

RESPONDENTS:

1. K.V.JOSEPH, AGED 65 YEARS
   S/O. LATE VARKEY, PENGATTU HOUSE
   PULINCUNNU P.O.,ALAPPUZHA NOW RESIDING AT
   KUDUPADOM,MALEKKUNNU,
   NEAR ST.ANTONY'S CHURCH
   PERUNNA CHAGANCHERRY. 686101.

2. KUNJAMMA JOSE @ ANNAMMA ,AGED 54 YEARS,
   D/O.LATE VARKEY, PENGATTU HOUSE
   PULINCUNNU P.O.,ALAPPUZHA NOW RESIDING AT
   PANTHALLOOR HOUSE, INDUSTRIAL ESTATE P.O.
   CHANGANCHERRY. 686101.

3. ACHAMMAKKUTTY JACOB,AGED 68 YEARS
   D/O.LATE VARKEY, PENGATTU HOUSE
   PULINCUNNU P.O.,ALAPPUZHA NOW RESIDING AT
   A-5, TRINITY ACRES, WEST SARJAPUR ROAD
   BANGALORE, PIN: 460034.

4. REV. FATHER ANTONY KUDUPADOM
   D/O.LATE VARKEY, PENGATTU HOUSE
   PULINCUNNU P.O.,ALAPPUZHA NOW RESIDING AT
   P.O.BOX NO. 60166, PHENIX-4068-KZH
   REPLUBIC OF SOUTH AFRICA.

5. REV.SR.CONCELIYA
D/O.LATE VARKEY, PENGATTU HOUSE
PULINCUNNU P.O.,ALAPPUZHA NOW RESIDING AT
HOLY CORSS CONVENT, KHEERABAD P.O.
SITHAPUR DISTRICT, UTTAR PRADESH.

6. ROASAMMA CHERIAN, AGED 49 YEARS,
D/O.LATE VARKEY, PENGATTU HOUSE
PULINCUNNU P.O.,ALAPPUZHA NOW RESIDING AT
OPPOSITE SKF, DDAYS GARDEN LAY OUT
BORMA SANDRA,
BANGALORE PIN: 562152.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 31473/2007 V

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PLAINT FILED IN OS NO. 533/2002 OF THE MUNSIFF COURT, ALAPPUZHA.

EXT.P2. COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS 2 TO 6 IN THE SAID SUIT.

EXT.P3. COPY OF THE IA NO. 4105/2005 FILED BY THE APPELLANTS IN THE SAID UNIT.

EXT.P4. COPY OF THE AFFIDAVIT OF THE AI ACCOMPANYING EXT.II.

EXT.P5. COPY OF THE ORDER DT. IA NOS. 4105/2005 & 4106 IN OS NO. 533/03 BY THE MUNSIFF COURT, ALAPPUZHA.

EXT.P6. COPY OF THE MEMORANDUM OF CMA FILED BY THE APPELLANTS BEFORE THE PRL. SUB COURT, ALAPPUZHA.

EXT.P7. COPY OF THE PETITION FILED BY THE APPELLANTS FOR READMISSION OF CMA.

EXT.P8. COPY OF THE AFFIDAVIT OF THE AI ACCOMPANYING EXT.VI PETITION.

EXT.P9. COPY OF THE ORDER IN IA NO. 806/2007 IN CMA NO. 7/06 BY THE PRL. SUB COURT, ALAPPUZHA.

RESPONDENT'S EXHIBITS - NIL.

True copy

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M.N. KRISHNAN, J.

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W.P.C. NO. 31473 OF 2007

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Dated this the 11th day of December, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P9 order passed in I.A.806/07 in CMA 7/06 of the Principal Subordinate Court, Alappuzha. It was an application filed under Order 41 Rule 19 CPC for re-admission of the appeal. It was dismissed for default on 26.5.07. The learned Subordinate Judge found that on an earlier occasion also the CMA was dismissed due to laches on the part of the learned counsel for the appellant and it was restored as per the order in I.A.1486/06, again on 26.5.07 as there was no representation the appeal was dismissed. The said CMA is filed to set aside the exparte decree passed under Order 9 Rule 13.

2. I had perused the affidavit, Ext.P8 which was filed before the Court below. It is an affidavit sworn to by the Advocate. It is submitted in the affidavit that he had

entrusted one of his friends, Advocate Sri. K.B. Viswanathanpillai for making representation and when he came at 12.30 p.m. to know about the appearance of respondents he was informed that the matter has been dismissed for default. It is submitted that the non-appearance was not due to any willful laches or negligence. The Advocate himself has sworn to the affidavit and he has also narrated the circumstances under which he happened to come to the Court late at 12.30 p.m. and that he had made arrangement with another friend of him for making representation. So, one cannot attribute grave misconduct or gross negligence on the part of the Advocate. The broad principles of natural justice always demand that the matter be heard on merits. Therefore, I feel this is a fit case where the Court has to restore the CMA which is dismissed for default. Therefore, the order under challenge is set aside

and the petition is allowed and the Court is directed to restore the CMA to file and dispose of the matter after hearing both sides in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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